BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RUBEN G. BELTRAN
(Claimant-Appellant)

PRECEDENT
BENEFIT DECISION
No. P-B-46
Case No. 69-1273

S.S.A. No.

The claimant appealed from Referee's Decision No. SF-MDT-10302 which held that the claimant was not entitled to training allowances under the Manpower Development and Training Act on the ground that there were no quotas for individuals allocated to the local office of the Department of Employment at which the claimant applied and that persons then enrolled in a training class could not be "blanketed in" as individual referrals.

STATEMENT OF FACTS

Since February 1968 the claimant has been attending Laney College in Oakland, California pursuing a course in business equipment technology. He was not referred to this training pursuant to the Manpower Development and Training Act. He was referred to Laney College by the State Department of Rehabilitation. He has been receiving $191 per month from Alameda County as aid to families with dependent children. He also has been receiving $30 per month from the State Department of Rehabilitation.

In October 1968 the claimant moved from Alameda County to his present residence in Contra Costa County. He continued his studies at Laney College. He continued to receive an allotment from the State Department of Rehabilitation, but as he was no longer a resident of Alameda County, that county was required to discontinue payment of the $191 as aid to families with dependent children.

In order to support his family while he completed his training, the claimant needed an income to replace that which the County of Alameda had discontinued. He had previously been informed concerning the Manpower Development and Training Act and applied to the department's local office in Richmond, California for training allowances under the federal program.

In providing training programs within the budget allowed to it, the department allocates the number of individuals it may be able to refer to a particular training program to areas most likely to need the skill being taught. No allocation was made to Contra Costa County for trainees in business equipment technology. The claimant's progress and attendance was exemplary but, having no allocation, the manpower training specialist of the Richmond office informed the claimant he could not be referred to the training course in which he was then enrolled.

Because the claimant was not satisfied with the specialist's verbal denial of a referral and was already attending the course for which he was seeking allowances, the specialist issued a written determination denying the claimant training allowances on the ground that he could not be referred to the course he was then pursuing. This determination was appealed to a referee. A hearing was held on December 3, 1968, in which the claimant and the manpower training specialist, as representative of the department, participated. The referee thereafter issued his decision which is here under appeal.

REASONS FOR DECISION

Section 203(a) of the Manpower Development and Training Act, as amended (42 United States Code Annotated, section 2583), provides that the Secretary of Labor may, on behalf of the United States, enter into agreements with the states by which the state acts as agent for the United States to accomplish the payment of training allowances to unemployed persons selected for training pursuant to the provisions of the Act.

Section 206 of the Act (42 U.S.C.A. §2586) provides that it may be administered by a state agency pursuant to an agreement between the state and federal agency. Such an agreement was signed on August 22, 1962 designating the Department of Employment as the agency to administer the Act in California. Section I of the Agreement of 1962 provides in pertinent part:

> ". . . in behalf of the State and as agent of the Secretary, in accordance with the Act and the rules, regulations and procedures promulgaged thereunder. The Agency will:
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> * * *
>
> "(B) pay training, subsistence, and transportation allowances to persons selected for and undergoing training provided by the Secretary" (emphasis added)

Section 207 of the Act (42 U.S.C.A. §2587) provides that the Secretary of Labor shall prescribe such rules and regulations as he may deem necessary and appropriate to carry out the provisions relating to the selection of trainees and the payment of training allowances. Subpart D of these rules and regulations concerns allowances to be paid under the Act. In designating those to whom allowances shall be paid, the Secretary of Labor speaks of persons "selected and referred to training."

It is thus apparent from the Act, the regulations and the agreement under which the State of California administers Federal Manpower Development and Training Programs that referral to a training program must precede payment of any allowances. To be considered for training allowances one must be an individual who has been "selected and referred to training." Even though the claimant's purpose in visiting the department was to obtain training allowances because he was already enrolled in a training course, he never was referred to that course under the Manpower Development and Training Act. The question of allowances was never before the specialist, and his written determination denying those allowances to the claimant was unnecessary and superfluous. Thus, the only factual matter

with which the referee should have been concerned at the hearing is that which deals with the specialist's decision not to refer the claimant to a training program. Any question of allowances can only arise after a referral has been made. The real issue which was before the referee arises because of the following provisions of the Act and the regulations concerning the right of appeal or review.

The Act does not provide a right of review or appeal. It does not mention such a right relative to a decision not to refer a person to training. It mentions appeals in connection with determinations denying allowances only for the purpose of stating that determinations on that subject are "final and conclusive for any purposes and not subject to review by any court or any other officer," except as provided in an agreement or regulation (section 203(f), 42 U.S.C.A. §2583). It is thus apparent that insofar as decisions not to refer a person to training, the Congress of the United States intended that there should be no appeal rights and that insofar as a decision to deny allowances to a person selected and referred to training, there should be no appeal rights unless provided by the Secretary of Labor.

The Secretary of Labor has been consistent with this expressed legislative intention by providing for appeals only from determinations "with respect to allowances or other training payments" and providing in subsection (2) (b) of section 20.51 of the regulations that "Determinations concerning selection or referral of individuals for training shall not be subject to appeal." Under such circumstances it is concluded that the referee had no jurisdiction in the first instance to consider a purported appeal from the specialist's determination. For the same reasons this board has no power to review the referee's decision unless a right of appeal has been created or perfected where none previously existed.

We must therefore examine whether the issuance of the department's determination denying allowances, rather than declining referral, conferred jurisdiction on the referee and this board; whether assumption of jurisdiction by the referee to hear an appeal prohibited by statute and regulation establishes a right in favor of the claimant that this board review the referee's decision; and, whether participation in the hearing before the referee by the specialist on behalf of the department creates a jurisdiction in the referee or this board by estoppel or consent.

There is no constitutional right to an appeal or other review (Bates v. Ransome-Crummey Co. (1919), 42 Cal. App. 699, 184 P. 39; Pacific Gas Radiator Co. v. Superior Court (1924), 70 Cal. App. 200, 232 P. 995). A right to appeal did not exist at common law and any modern right to appeal must therefore be derived from statute (Gale v. Tuolumne County Water Co. (1914), 169 Cal. 46, 145 P. 532; In re Sutter-Butte By-Pass Assessment No. 6 (1923), 190 Cal. 532, 213 P. 974; Weiss v. Garofalo (1949), 89 Cal. App. 2d 811, 201 P. 2d 845). An administrative agency has only the power conferred by statute and must strictly adhere to limitations in the statute delegating power to it (Whitcomb Hotel v. California Employment Commission (1944), 24 Cal. 2d 753, 151 P. 2d 233; Blatz Brewing Co. v. Collins (1945), 69 Cal. App. 2d 639, 160 P. 2d 37). The statute cannot be construed to confer upon ministerial officers authority that the legislature has seen fit to withhold (Christophel v. Riley (1929), 206 Cal. 242, 273 P. 1064).

In Gale v. Tuolumne County Water Co., supra, the defendant appealed an order of contempt. Section 1222 of the California Code of Civil Procedure provides that judgments in cases of contempt are final and conclusive. In declining to hear the appeal on its merits, the court said:

> ". . . Necessarily a judgment, which by the code is made final and conclusive, is not appealable. This court has repeatedly held that by reason of its finality and conclusiveness the judgment in a contempt case is not appealable /citations omitted/. An appeal does not lie from such a judgment, even though it appear that the court adjudging one guilty of contempt has acted without jurisdiction. . . ."

Although jurisdiction of the person may be conferred by consent, jurisdiction of the subject matter cannot be conferred upon an administrative tribunal by agreement of the parties. In Zurich General Accident & Liability Ins. Co. v. Industrial Accident Commission (1923), 191 Cal. 770, 218 P. 563, the parties agreed, in a policy of insurance, that it applied to industrial injuries. The court held, however, that such an agreement could not

confer jurisdiction on the Industrial Accident Commission when exclusive jurisdiction of the matter in controversy was vested in the admiralty courts.

Jurisdiction of the subject matter cannot be conferred by estoppel. In Employers' Liability Assurance Corporation v. Industrial Accident Commission (1920), 187 Cal. 615, 203 P. 95, the parties agreed, in a policy of insurance, that it applied to industrial injuries. The court held that the Industrial Accident Commission's jurisdiction extends only to an employer-employee relationship. It was also held that jurisdiction in the commission could not be established by any estoppel against the employer's insurance company that might arise out of having listed a partner of the insured partnership as an employee in the policy and having accepted premiums for his coverage.

In Unemployment Reserves Commission v. St. Francis Home Association (1943), 58 Cal. App. 2d 271, 137 P. 2d 64, failure to object did not confer trial jurisdiction on the appellant department of the superior court. In Higgins v. Coyne (1946), 75 Cal. App. 2d 69, 170 P. 2d 25, failure to object to an erroneous transfer of the case to the superior court and participation in the trial which took place therein did not confer jurisdiction on the superior court.

Although no question of jurisdiction is raised at the trial of an issue, questions of jurisdiction are never waived and may be raised for the first time on appeal (Lindsay-Strathmore Irrigation District v. Superior Court (1920), 182 Cal. 315, 187 P. 1056; Sampsell v. Superior Court (1948), 32 Cal. 2d 763, 197 P. 2d 739).

We may determine the jurisdictional question although it is considered here for the first time. The essential determination of the manpower training specialist was that the claimant could not be selected and referred to the training he sought. That determination was not appealable to the referee. Paraphrasing the language of the court in Gale v. Tuolumne County Water Co., an appeal does not lie from the department's determination even though it acted without jurisdiction. Likewise, assumption of jurisdiction by the referee and

participation in the hearing by the department representative does not create a power of review in this board where none exists under the provisions of the statute and the regulations delegating power to us.

DECISION

The determination of the department and the decision of the referee thereon are set aside. The appeal to this board is dismissed.

Sacramento, California, June 24, 1969.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT